

# **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

## **FINAL STATEMENT OF REASONS**

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5  
AMEND ARTICLE 3, SECTION 1213.1, AMEND ARTICLE 6, SECTION 1230, AND  
AMEND ARTICLE 7.5, SECTION 1239

### **COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA (CHP-R-02-06) (INITIAL NOTICE: Z-02-1104-01)**

The California Highway Patrol (CHP) has adopted by reference major portions of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, April 1, 2002, Edition. This criteria outlines conditions by which a commercial vehicle may be placed out of service as a result of an inspection by an authorized representative of the CHP. CHP personnel utilize this criteria for determining whether or not a driver and/or vehicle is in such an unsafe condition that they are likely to constitute a hazard on a highway and, therefore, should be placed out of service. The CVSA reviews and updates this criteria annually and, to remain consistent, the CHP has updated its regulations annually to reflect the most current data available.

### **PURPOSE OF REGULATIONS**

The CHP has incorporated by reference of the CVSA North American Standard Out-of-Service Criteria, April 1, 2002, Edition, to the CVSA North American Standard Out-of-Service Criteria, in Title 13, California Code of Regulations (13 CCR). The intent of this criteria is to maintain specific guidelines for determining whether or not a driver and/or vehicle is in such an unsafe condition that they are likely to constitute a hazard on the highway. This criteria provides consistency throughout California with its neighboring states, Canada and Mexico, and maintains a regulatory basis for enforcement efforts as they relate to commercial vehicle out-of-service criteria. Most criteria listed for out of service are also violations of current California Vehicle Code (VC) or 13 CCR regulations already in effect and updating regulations to reflect the most current edition will continue to provide the regulatory authority to place the driver and/or vehicle out of service in addition to issuing a citation.

Section 34501(a)(1) VC authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 VC. In addition, Section 2402 VC provides the Commissioner with the authority to "make and enforce such rules and regulations as may be necessary to carry out the duties of the Department" and Section 2410 VC provides the authority for the CHP to place vehicles out of service (Attorney General's Opinion NS 2520) in order to "ensure safety."

## **SECTION-BY-SECTION OVERVIEW OF MODIFICATIONS MADE**

### **§1239. Adoption by Reference.**

The CVSA North American Standard Out-of-Service Criteria (April 1, 2002) is incorporated by reference into 13 CCR. The CVSA North American Standard Out-of-Service Criteria is a voluminous (40 pages), extensively illustrated, and copyrighted document that is revised, updated, and published annually by the CVSA. The Out-of-Service Criteria is adopted by reference because it would be cumbersome, unduly expensive and impractical to publish the document in the California Code of Regulations. This represents a vast cross section of industry and public safety concerns.

As noted in the Notice of Proposed Regulatory Action and the Initial Statement of Reasons, copies of the CVSA North American Standard Out-of-Service Criteria were made available for review and comment upon request. No requests for copies were received during the public comment period.

### **Changes to the CVSA North American Standard Out-of-Service Criteria (April 1, 2002, Edition):**

#### **Vehicle Condition Out-of-Service Criteria Changes**

##### **8. *Steering Mechanism:***

*Subpart 8.b(2).: Deletes “Worn, faulty, or” from the Out-of-Service Criteria as it pertains to steering-column universal joints. This amendment to the criteria requires a vehicle to be placed out of service only when a welded repair has been made to steering-column universal joints.*

## **WRITTEN COMMENT PERIOD**

The CHP received only one written response to the January 6, 2003, Notice of Proposed Regulatory Action. The CHP acknowledges the comments by Wallace Transport, Inc. and incorporated a copy of their letter and of its attachments into the public record. The comment did not address any change in the 2002 CVSA out-of-service standards, and their comment was addressed during the previous regulatory action (Z-01-0626-02) concerning the issue of welded repairs.

## **Written Comment**

### **Law Offices of Mason, Robbins, Gnass & Browning Wallace Transport, Inc.**

Wallace Transport, Inc. submitted the following comments regarding the Proposed Regulatory Action - CHP R-02-06 CVSA North American Standard Out-of-Service Criteria. "Wallace Transport, Inc. remains concerned that the Criteria, as written, may be incorrectly interpreted to include "hard surfacing" of new pintle hooks to decrease wear."

Wallace Transport, Inc. reiterated their position that there is no scientific data or traffic data to support the proposition that hard surfacing of pintle hooks presents a safety risk. Additionally, Wallace Transport, Inc. requested that the Criteria be written to specifically exclude hard surfacing that is not done on a component which is physically broken or worn to 20% limits as acceptable maintenance.

The CHP concurs that hard facing performed on a pintle-hook assembly with less than 20% wear constitutes preventive maintenance, not repair. Any welding performed as a result of a defect, as defined in the Criteria, is still considered a repair and will be considered an out-of-service condition. CHP enforcement policy will reflect this distinction.

The CVSA North American Standard Out-of-Service Criteria is specific in its reference to out-of-service criteria for connecting device components. This standard clearly states a welded repair is to be considered an out-of-service condition. It is the interpretation of the CHP this criteria is only applicable to "welded repairs." A welded repair is only necessary when a component is broken or worn to such an extent that continued use would result in an inherently dangerous condition. However, in most instances, hard-facing is a matter of maintenance and should not be prohibited unless the component in question is physically broken or worn beyond the 20 percent limits addressed by the CVSA North American Standard Out-of-Service Criteria.

For the reasons indicated above, the CHP is adopting the CVSA North American Standard Out-of-Service Criteria, April 1, 2002 edition as written.

## **PUBLIC HEARINGS:**

No public hearings were requested during the open comment periods, therefore none was held.

## **STUDIES/RELATED FACTS**

The following documents lend support or are otherwise related to this rulemaking. Copies of these documents, or relevant portions thereof, can be obtained from the CHP by telephoning the Commercial Vehicle Section at (916) 445-1865, 1-800-735-2929 (TT/TDD), 1-800-735-2922 (Voice), or via Facsimile at (916) 446-4579. Please note: All requested materials will be sent via United States Mail.

- CVSA North American Standard Out-of-Service Criteria; revised April 1, 2002.

- CVSA North American Uniform Out-of-Service Criteria; revised April 1, 2001.
- Attorney General Opinion NS 2520, Authority to place vehicles out-of-service.

### **LOCAL MANDATE**

These regulations do not impose any new mandate on local agencies or school districts.

### **IMPACT ON BUSINESS**

Businesses involved in the transportation of interstate and intrastate commerce via commercial trucking may choose to purchase the current CVSA North American Standard Out-of-Service Criteria at a cost of approximately \$27 annually at [www.cvsa.org](http://www.cvsa.org). The CHP is not aware of any other cost impacts that a representative private person or business would necessarily incur reasonable compliance with this action.

### **ALTERNATIVES**

The CHP has determined that no reasonable alternative identified by the CHP, or that has otherwise been brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **Alternatives Identified and Rejected:**

***Alternative 1:** Do nothing and allow outdated reference to remain in 13 CCR:* This alternative was not selected because the continued use of outdated criteria would defeat the purpose of promoting uniformity and consistency with neighboring states.

***Alternative 2:** Discontinue use of Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria:* Discontinuing the use of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria as an enforcement tool by CHP Officers may result in:

- Increased numbers of unsafe commercial vehicles being operated on California highways;
- Lack of inspection uniformity with neighboring states; and
- Increased equipment-related traffic collisions involving commercial vehicles.

The estimated cost of this alternative could exceed \$1,000,000. This estimated figure was derived based on additional time accident investigators may spend investigating collisions

resulting from increased numbers of unsafe vehicles on California roadways. Additional costs may be incurred because commercial officers may re-inspect vehicles that have already been inspected outside of California because the CHP would not recognize vehicle inspections performed elsewhere.

***Alternative 3:*** *Update 13 CCR to current revision of the Commercial Vehicle Safety Alliance Out-of-Service Criteria:* This is the Alternative selected as it best meets the safety needs of the public and the Department.

## **PERFORMANCE VS. PRESCRIPTIVE STANDARDS**

Due to the nature of the equipment (brakes, frames, fuel systems, etc.) and the standards (driver's licenses, hours of service, etc.) to which this criteria will be applied, it is necessary to apply prescriptive standards. Equipment service limits are critical in commercial vehicles and must be closely adhered to in order to ensure the proper functioning of the equipment. Small deviations in critical component dimensions could mean the difference between an item of equipment that is working properly and an item that fails completely. A critical item of equipment that fails on any vehicle could lead to a collision and possible injury or death. Non-equipment related standards are also prescriptive and critical. In order to properly and safely operate a vehicle, a driver must pass a written knowledge test as well as demonstrate an ability to operate the vehicle.

## **ECONOMIC IMPACT**

The Department has determined these regulation amendments will result in:

- No significant increased costs for owners or operators of commercial vehicles. This rulemaking action will simply provide a regulatory basis to enforce out-of-service criteria that is already being used by the CHP and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;
- No impact on the level of employment in the state; and
- No impact on the competitiveness of this state to retain businesses, as state, provincial and national governments throughout North America have already adopted these requirements.